

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2369**

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**Introduced by Assembly Member La Suer**

February 23, 2006

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An act to amend Section 491.160, 709.170, and 1993 of the Code of Civil Procedure, and to repeal Section 26744 of the Government Code, relating to civil warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2369, as amended, La Suer. Civil warrants.

(1) Existing law permits a court, in specified circumstances in civil actions for attachment and enforcement of judgments, to issue a warrant when a person fails *to* appear for an examination as ordered by the court and permits the court to punish that person for contempt. Existing law establishes fees for serving and executing these bench warrants.

This bill would revise these provisions to provide an alternative to issuing a warrant and punishing a person for contempt, pursuant to which a court may issue an arrest warrant, and would provide for a schedule of the fees that may be charged pursuant to this process. The bill would authorize the sheriff to release the person arrested upon his or her promise to appear, would set forth the conditions under which the person arrested may not be released, and would specify the civil assessment for failure to appear upon a promise to appear. By imposing new duties on local law enforcement, the bill would impose a state-mandated local program. This bill would also make a technical correction.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 491.160 of the Code of Civil Procedure  
2 is amended to read:

3 491.160. (a) If an order requiring a person to appear for an  
4 examination was served by a sheriff, marshal, a person specially  
5 appointed by the court in the order, or a registered process server,  
6 and the person fails to appear:

7 (1) The court may, *pursuant to a warrant, have the person*  
8 *brought before the court to answer for the failure to appear and*  
9 *may punish the person for contempt or, in the alternative, issue a*  
10 warrant for the arrest of the person who failed to appear as  
11 required by the court order, pursuant to Section 1993.

12 (2) If the person's failure to appear is without good cause, the  
13 plaintiff shall be awarded reasonable attorney's fees incurred in  
14 the examination proceeding.

15 (b) A person who willfully makes an improper service of an  
16 order for an examination which subsequently results in the arrest  
17 pursuant to subdivision (a) of the person who fails to appear is  
18 guilty of a misdemeanor.

19 SEC. 2. Section 708.170 of the Code of Civil Procedure is  
20 amended to read:

21 708.170. (a) If an order requiring a person to appear for an  
22 examination was served by a sheriff, marshal, a person specially  
23 appointed by the court in the order, or a registered process server,  
24 and the person fails to appear:

25 (1) The court may, *pursuant to a warrant, have the person*  
26 *brought before the court to answer for the failure to appear and*  
27 *may punish the person for contempt or, in the alternative, issue a*  
28 warrant for the arrest of the person who failed to appear as  
29 required by the court order, pursuant to Section 1993.

1 (2) If the person's failure to appear is without good cause, the  
2 judgment creditor shall be awarded reasonable attorney's fees  
3 incurred in the examination proceeding. Attorney's fees awarded  
4 against the judgment debtor shall be added to and become part of  
5 the principal amount of the judgment.

6 (b) A person who willfully makes an improper service of an  
7 order for an examination which subsequently results in the arrest  
8 pursuant to subdivision (a) of the person who fails to appear is  
9 guilty of a misdemeanor.

10 SEC. 3. Section 1993 of the Code of Civil Procedure is  
11 amended to read:

12 1993. (a) (1) As an alternative to issuing a warrant for  
13 contempt pursuant to paragraph (5) or (9) of subdivision (a) of  
14 Section 1209, the court may issue a warrant for the arrest of a  
15 witness who failed to appear pursuant to a subpoena or a person  
16 who failed to appear pursuant to a court order. The court, upon  
17 proof of the service of the subpoena or order, may issue a warrant  
18 to the sheriff of the county in which the witness or person may be  
19 located and shall, upon payment of fees as provided for in  
20 Section 26744.5 of the Government Code, arrest the witness or  
21 person and bring him or her before the court.

22 (2) Before issuing a warrant for a failure to appear pursuant to  
23 a subpoena pursuant to this section, the court shall issue a  
24 "failure to appear" notice informing the person subject to the  
25 subpoena that a failure to appear in response to the notice may  
26 result in the issuance of a warrant. This notice requirement may  
27 be omitted only upon a showing that the appearance of the person  
28 subject to the subpoena is material to the case and that urgency  
29 dictates the person's immediate appearance.

30 (b) The warrant shall contain all of the following:

31 (1) The title and case number of the action.

32 (2) The name and physical description of the person to be  
33 arrested.

34 (3) The last known address of the person to be arrested.

35 (4) The date of issuance and county in which it is issued.

36 (5) The signature of the magistrate issuing the warrant, the  
37 title of his or her office, and the name of the court.

38 (6) A command to arrest the person for failing to appear  
39 pursuant to the subpoena or court order, and specifying the date  
40 of service of the subpoena or court order.

(7) A command to bring the person to be arrested before the issuing court, or the nearest court if in session, for the setting of bail in the amount of the warrant or to release on the person's own recognizance. Any person so arrested shall be released from custody if he or she cannot be brought before the court within 12 hours of arrest, and the person shall not be arrested if the court will not be in session during the 12-hour period following the arrest.

(8) A statement indicating the expiration date of the warrant as determined by the court.

(9) The amount of bail.

(10) An endorsement for nighttime service if good cause is shown as provided in Section 840 of the Penal Code.

(11) A statement indicating whether the person may be released upon a promise to appear as provided by Section 1993.1. The court shall permit release upon a promise to appear, unless it makes a written finding that the urgency and materiality of the person's appearance in court precludes use of the promise to appear process.

(12) The date and time to appear in court if arrested and released pursuant to paragraph (11).

SEC. 4. Section 26744 of the Government Code is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.